

KAMPMEIER & KNUTSEN PLLC

ATTORNEYS AT LAW

BRIAN A. KNUTSEN
Licensed in Oregon & Washington
503.841.6515
brian@kampmeierknutsen.com

October 19, 2015

RECEIVED ON:

OCT 22 2015

EPA Region 10
Office of the Regional Administrator

Certified U.S. Mail – Return Receipt Requested

Managing Agent
Steelscape, Inc.
Pacific Northwest Flat Products Facility
222 West Kalama River Road
Kalama, WA 98625

**Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND
REQUEST FOR STORMWATER POLLUTION PREVENTION PLAN**

Dear Managing Agent:

This letter is submitted on behalf of Columbia Riverkeeper, 111 Third Street, Hood River, OR 97031, (541) 387-3030. Any response or correspondence related to this matter should be directed to Brian A. Knutsen at the address provided below. This letter is to provide you with sixty days' notice of Columbia Riverkeeper's intent to file a citizen suit against Steelscape Inc., Steelscape Washington LLC d/b/a Steelscape, Inc., and/or Steelscape, LLC d/b/a Steelscape, Inc. (hereinafter, collectively "Steelscape") under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described below. This letter is also a request for a complete and current copy of Steelscape's stormwater pollution prevention plan ("SWPPP").

The Washington Department of Ecology ("Ecology") issued National Pollutant Discharge Elimination System permit number WA0040851 under section 402 of the CWA, 33 U.S.C. § 1342, on September 12, 2007, with an effective date of July 1, 2008 (the "Permit").¹ The Permit authorizes Steelscape to discharge pollutants to the Columbia River from its facility located at or near 222 West Kalama River Road, Kalama, WA 98625 (the "Facility") subject to compliance with specific conditions. Steelscape has violated and continues to violate the conditions of the Permit and to thereby discharge pollutants to waters of the United States in violation of section 301(a) of the CWA. 33 U.S.C. §1311(a).

¹ The Permit was set to expire on June 30, 2013, but was administratively extended and remains in effect.

I. COLUMBIA RIVERKEEPER'S COMMITMENT TO PROTECTING A FISHABLE AND SWIMMABLE COLUMBIA RIVER.

Columbia Riverkeeper's mission is to restore and protect the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. Columbia Riverkeeper is a non-profit organization with members who live, recreate, and work throughout the Columbia River basin, including in areas impacted by Steelscape's wastewater discharges.

Threats facing the Columbia River are severe by any measure. *See Columbia River Basin State of the River Report for Toxics*, Environmental Protection Agency, Region 10 (January 2009) (available online at: <http://www2.epa.gov/columbiariver/state-river-report-toxics>). In fact, the vast majority of rivers and streams in Washington fail to meet basic state water quality standards for pollutants such as toxics and temperature. *See State of Washington 303(d) List* (available online at: <http://www.ecy.wa.gov/programs/wq/303d/index.html>). Water quality standards are designed to protect aquatic life, fishing, swimming, and drinking water.

This Notice of Intent to Sue Steelscape is part of Columbia Riverkeeper's effort to improve water quality in the Columbia River Basin for purposes including swimming; habitat quality; and subsistence, recreational, and commercial fishing. Columbia Riverkeeper has serious concerns about the impacts of Steelscape's wastewater discharges on the Columbia River. The Columbia River is listed as impaired under section 303(d) of the CWA, 33 U.S.C. § 1313(d), in the vicinity of Steelscape's Facility (Water Resource Inventory Area 27) for several pollutants, including arsenic. Arsenic is a known carcinogen that can cause cancer in skin and internal organs such as the liver, kidneys, lungs, and bladder, and other adverse health impacts. As discussed below, Steelscape has repeatedly discharged wastewater containing concentrations of arsenic in excess to the Permit's effluent limits.

II. STEELSCAPE'S VIOLATIONS OF THE PERMIT'S EFFLUENT LIMITS.

Condition S1.A of the Permit establishes numeric effluent limits on the amount of arsenic in Steelscape's wastewater discharges. Steelscape has repeatedly violated these effluent limitations.

A. Violations of the Average Monthly Limit for Arsenic.

Condition S1.A of the Permit sets an average monthly limit for arsenic of 2.4 µg/L. Steelscape violated this numeric effluent limit during the months indicated in Table 1, below, and on any additional months for which samples taken by Steelscape demonstrate that wastewater discharges from Steelscape's facility exceeded a monthly average concentration of 2.4 µg/L arsenic.

////

////

Table 1. Monthly Average Arsenic Values.

	Average Monthly Arsenic (Limit = 2.4 µg/L)
1/2013	0.7
2/2013	0.9
3/2013	1.3
4/2013	1.8
5/2013	1.0
6/2013	0.0
7/2013	1.3
8/2013	2.9
9/2013	1.1
10/2013	2.0
11/2013	0.0
12/2013	1.3
1/2014	0.0
2/2014	2.5
3/2014	0.0
4/2014	0.7
5/2014	0.7
6/2014	--
7/2014	7.2
8/2014	3.4 or 4.6 ^a
9/2014	0.9
10/2014	4.0
11/2014	1.5
12/2014	1.6
1/2015	3.3
2/2015	2.2
3/2015	1.7
4/2015	1.5
5/2015	1.6
6/2015	2.4

a. Steelscape reported its August, 2014, average monthly concentration for arsenic as 3.4 µg/L, but an Ecology inspection report indicates that it was actually 4.6 µg/L.

B. Violations of the Maximum Daily Limit for Arsenic.

Condition S1.A of the Permit sets a maximum daily limit for arsenic of 4.8 µg/L. Steelscape violated this numeric effluent limit on at least one day during each of the months indicated in Table 2, below, and on any additional days during the last five years for which samples taken by Steelscape demonstrate that wastewater discharges from Steelscape's facility exceeded a maximum concentration of 4.8 µg/L arsenic. Steelscape possesses monitoring data on the facility's daily maximum arsenic levels and is therefore in the best position to know the exact dates on which such violations occurred.

Table 2. Maximum Daily Arsenic Values.

	Daily Maximum Arsenic (Limit = 4.8 µg/L)
1/2013	1.89
2/2013	1.58
3/2013	1.56
4/2013	2.17
5/2013	1.41
6/2013	< 1
7/2013	3.53
8/2013	4.11
9/2013	4.56
10/2013	5.56
11/2013	< 1
12/2013	6.39
1/2014	< 1
2/2014	5.17
3/2014	< 1
4/2014	3.39
5/2014	2.80
6/2014	--
7/2014	14.20
8/2014	7.00 or 3.34 ^b
9/2014	3.44
10/2014	10.10
11/2014	3.80
12/2014	1.82
1/2015	5.70
2/2015	3.61
3/2015	2.33

4/2015	2.56
5/2015	2.62
6/2015	4.70

b. Steelscape reported its August, 2014, maximum daily concentration for arsenic as 7.0 µg/L, but an Ecology inspection report indicates that it was actually 3.34 µg/L.

III. STEELSCAPE'S VIOLATIONS OF THE PERMIT'S MONITORING, REPORTING, AND MAINTINENCE REQUIREMENTS.

A. Failure to Take and Report Weekly Arsenic Samples.

Condition S1.A of the Permit requires Steelscape to analyze a sample of its discharge for arsenic once per week. Condition S2.A of the Permit requires Steelscape to report and submit the results of each weekly arsenic sample in monthly Discharge Monitoring Reports ("DMR") no later than the 15th day of the month following each completed monitoring period. Steelscape violated these Permit requirements each and every time during the last five years that Steelscape failed to take or analyze a weekly sample of its discharge for arsenic as required by the Permit. Steelscape also violated these Permit requirements each and every time during the last five years that Steelscape failed to timely submit a DMR to Ecology that contains the results for all the weekly arsenic sampling that occurred during the monitoring period. Steelscape alone possesses its weekly arsenic monitoring data and records of each DMR submitted to Ecology. Steelscape is therefore in the best position to know the exact dates on which each such violation occurred.

B. Failure to Properly Operate and Maintain all Treatment and Control Facilities or Systems.

Condition S3 of the Permit requires Steelscape, at all times, to properly operate and maintain all facilities or systems of treatment and control which are installed to achieve compliance with the terms and conditions of the Permit. Steelscape is in violation of condition S4 of the Permit because Steelscape has not properly operated its facilities to achieve compliance with the discharge limits, as demonstrated by exceedances identified in Tables 1 and 2 of this Notice Letter. These violations occurred, at least, during each of the monitoring periods identified Tables 1 and 2 of this Notice Letter.

C. Failure to Report and Respond to Effluent Limit Violations.

Condition S2.E of the Permit requires Steelscape to take specific actions when Steelscape violates an effluent limit contained in the Permit. First, Condition S2.E.1 of the Permit requires Steelscape to "[i]mmediately take action to stop . . . unauthorized discharges or otherwise stop the noncompliance, [and] correct the problem" Second, Condition S2.E.2 of the Permit requires Steelscape to "[i]mmediately notify the Department [of Ecology] of the failure to comply" with the effluent limit. Third, Condition S2.E.3 of the Permit requires Steelscape to "[s]ubmit a detailed written report to the Department [of Ecology] within 30 days" of each effluent limit violation. The "detailed report" shall contain:

(1) a description of the violation; (2) the exact date and time of the violation; (3) if the violation has not been corrected, the time it is expected to continue; and (4) the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. On information and belief, Steelscape violated each of the above requirements after each and every time during the last five years that Steelscape's monitoring results showed an exceedance of the daily maximum or monthly average arsenic effluent limits, including but not limited to the instances identified in Tables 1 and 2 above. Steelscape alone possesses its weekly arsenic monitoring data. Steelscape is therefore in the best position to know the exact dates on which each such violation occurred.

IV. REQUEST FOR SWPPP.

Steelscape has been granted coverage under Washington's Industrial Stormwater General Permit issued by Ecology on December 3, 2014, effective January 2, 2015, under National Pollutant Discharge Elimination System permit number WAR002913 (the "Stormwater Permit"). The Stormwater Permit authorizes Steelscape to discharge stormwater associated with industrial activity from the Facility subject to compliance with specific conditions.

Pursuant to Condition S9.F of the Stormwater Permit, Columbia Riverkeeper hereby requests that Steelscape provide a copy of, or access to, its SWPPP complete with all incorporated plans, monitoring reports, checklists, and training and inspection logs. The copy of the SWPPP and any other communications about this request should be directed to Brian A. Knutsen at the address provided below. Should Steelscape fail to provide the requested complete copy of, or access to, its SWPPP as required by Condition S9.F of the Stormwater Permit, it will be in violation of that condition, which violation shall also be subject to this Notice of Intent to Sue and any ensuing lawsuit.

V. PARTY GIVING NOTICE OF INTENT TO SUE.

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper
111 Third St.
Hood River, OR 97031
(541) 387-3030

VI. ATTORNEYS REPRESENTING COLUMBIA RIVERKEEPER.

The attorneys representing Columbia Riverkeeper in this matter are:

Brian A. Knutsen
Paul A. Kampmeier
Kampmeier & Knutsen, PLLC
833 S.E. Main Street, Mail Box 318
Portland, Oregon 97214

Tel: (503) 841-6515
brian@kampmeierknutsen.com

Miles Johnson, Clean Water Attorney
Columbia Riverkeeper
111 Third Street
Hood River, Oregon 97031
Tel: (541) 490-0487
miles@columbiariverkeeper.org
(Licensed in Oregon)

VII. CONCLUSION.

The above-described violations reflect those indicated by the information currently available to Columbia Riverkeeper. These violations are ongoing and more violations are reasonably likely to occur in the future based on Steelscape's history of violations. Columbia Riverkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects Steelscape to a penalty of up to \$37,500 per day, with violations of each monthly effluent limit subject to a penalty of up to \$37,500 for each day within the monitoring month. In addition to civil penalties, Columbia Riverkeeper will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Columbia Riverkeeper believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. Columbia Riverkeeper intends, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Steelscape under Section 505(a) of the Clean Water Act, 33 USC § 1365(a), for the violations described herein.

Columbia Riverkeeper is willing to discuss effective remedies for the violations described in this letter and settlement terms during the 60-day notice period. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within ten (10) days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed promptly. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

KAMPMEIER & KNUTSEN, PLLC

By: 
Brian A. Knutsen

cc: Regina A. McCarthy, Administrator, U.S. EPA
Dennis J. McLerran, Region 10 Administrator, U.S. EPA
Maia Bellon, Director, Washington Department of Ecology
CT Corporation System, Registered Agent

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am counsel for Columbia Riverkeeper and that on October 19, 2015, I caused copies of the foregoing Notice of Intent to Sue Under the Clean Water Act to be served on the following by depositing it with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:


Managing Agent
Steelscape, Inc.
Pacific Northwest Flat Products Facility
222 West Kalama River Road
Kalama, WA 98625

Administrator Regina A. McCarthy
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W., Mail Code 1101A
Washington, D.C. 20460

Regional Administrator Dennis J. McLerran
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Code RA-210
Seattle, WA 98101

Director Maia D. Bellon
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

CT Corporation System, Registered Agent
505 Union Ave. SE, Ste. 120
Olympia, WA 98501



Brian A. Knutsen